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THE LARYNGEAL MASK COMPANY LTD.
and LMA NORTH AMERICA, INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

THE LARYNGEAL MASK COMPANY
LTD. and LMA NORTH AMERICA, INC.,

Plaintiffs,

v.

AMBU A/S, AMBU INC., and AMBU
LTD.,

Defendants.

AMBU A/S, AMBU INC., and AMBU LTD.,

Counterclaimants,

v.

THE LARYNGEAL MASK COMPANY
LTD. and LMA NORTH AMERICA, INC.,

Counter-Defendants.

Civil Action No. 07 CV 1988 DMS (NLS)

**DECLARATION OF JOHN B. SGANGA
IN SUPPORT OF PLAINTIFFS'
OPPOSITIONS TO DEFENDANTS'
THREE PENDING MOTIONS FOR
SUMMARY JUDGMENT**

Date: September 18, 2009

Time: 1:30 p.m.

Courtroom 10, 2nd Floor

Honorable Dana M. Sabraw

**CONFIDENTIAL
INFORMATION
FILED UNDER SEAL**

1 I, John B. Sganga, declare and state as follows:

2 I am a partner at the law firm of Knobbe, Martens, Olson & Bear, LLP, co-counsel for
3 Plaintiffs The Laryngeal Mask Company Ltd. and LMA North America, Inc. (collectively
4 “LMA”) in this action. I submit this consolidated declaration in Support of Plaintiffs’ three
5 separate Memorandum of Points and Authorities in Support of Their Oppositions to Defendants’
6 Motions for Summary Judgment of Invalidity for Anticipation and Obviousness, Summary
7 Judgment of Invalidity for Lack of Written Description, and Partial Summary of Non-
8 infringement. The following statements are based on my personal knowledge unless otherwise
9 indicated.

10 1. Attached hereto as Exhibit 1 is a true and correct copy of the Opening Expert
11 Report of William Rosenblatt dated June 19, 2009.

12 2. Attached hereto as Exhibit 2 is a true and correct copy of the July 29, 2009
13 deposition of Dr. William H. Rosenblatt.

14 3. Attached hereto as Exhibit 3 is a true and correct copy of the Rule 26(a)(2)(B)
15 Report of Herb D’Alo.

16 4. Attached hereto as Exhibit 4 is a true and correct copy of U.S. Patent No.
17 5,305,743 issued April 26, 1994.

18 5. Attached hereto as Exhibit 5 is a true and correct copy of a memo from Dr. Brain
19 to Robert Gaines-Cooper of LMA bearing bates number LMA00004781.

20 6. Attached hereto as Exhibit 6 is a true and correct copy of the Intavent Laryngeal
21 Mask Instruction Manual bearing bates numbers LMA00004009-4070.

22 7. Attached hereto as Exhibit 7 is a true and correct copy of a letter addressed to Dr.
23 Archibald Brain bearing bates numbers BRAIN00006114-6119.

24 8. Attached hereto as Exhibit 8 is a true and correct copy of an excerpt from
25 Understanding Anesthesia Equipment bearing bates numbers AMBU258105-AMBU258118.

26 9. Attached hereto as Exhibit 9 is a true and correct copy of UK Patent Application
27 No. GB 2,317,830 A.

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1 10. Attached hereto as Exhibit 10 is a true and correct copy of U.S. Patent No.
2 5,983,897 issued November 16, 1999.

3 11. Attached hereto as Exhibit 11 is a true and correct copy of U.S. Patent No.
4 6,095,144 issued August 1, 2000.

5 12. Attached hereto as Exhibit 12 is a true and correct copy of the transcript from the
6 January 6, 2009 deposition of Samsun Lampotang, Ph.D.

7 13. Attached hereto as Exhibit 13 is a true and correct copy of the transcript from the
8 July 30, 2009 deposition of Samsun Lampotang, Ph.D.

9 14. Attached hereto as Exhibit 14 are true and correct excerpts from the May 22, 2009
10 deposition of Jens Frimann of Ambu.

11 15. Attached hereto as Exhibit 15 is a true and correct copy of deposition exhibit
12 number 75 used at the May 19, 2009 deposition of Henrik Wendler of Ambu bearing bates
13 numbers AMBU0115837-AMBU0115852.

14 16. Attached hereto as Exhibit 16 is a true and correct copy of a piece of Ambu
15 marketing literature entitled “Ambu Laryngeal Mask” bearing bates number LMA00105743
16 (color highlighting added).

17 17. Attached hereto as Exhibit 17 is a true and correct copy the “Ambu AuraFlex
18 Brochure” downloaded from the Ambu website on May 28, 2009 at
19 http://www.ambu.com/RespiratoryCare/Respiratory_Care/Brochures.aspx (the “AuraFlex
20 Brochure”).

21 18. Attached hereto as Exhibit 18 is a true and correct copy of the Expert Report of
22 Creighton Hoffman Regarding Damages dated June 19, 2009.

23 19. Attached hereto as Exhibit 19 is a true and correct copy of Ambu’s May 7, 2009
24 company announcement no. 6-2008/09 entitled “Interim report for Q2 and Q1-Q2 2008/09 (1
25 October 2008 – 31 March 2009).”

26 20. Attached hereto as Exhibit 20 is a true and correct copy deposition exhibit number
27 417 used at the June 12, 2009 deposition of Allan Jensen of Ambu bearing bates number
28 AMBU0083692-AMBU0083694.

1 21. Attached hereto as Exhibit 21 is a true and correct copy of deposition exhibit
2 number 418 used at the June 12, 2009 deposition of Allan Jensen of Ambu bearing bates
3 numbers AMBU0101669-AMBU0101670.

4 22. Attached hereto as Exhibit 22 is a true and correct copy of the transcript from the
5 August 5, 2009 deposition of Creighton G. Hoffman.

6 23. Attached hereto as Exhibit 23 is a true and correct copy of deposition exhibit
7 number 413 used at the June 12, 2009 deposition of Allan Jensen of Ambu.

8 24. Attached hereto as Exhibit 24 is a true and correct copy of deposition exhibit
9 number 374 used at the June 9, 2009 deposition of Frank Homa of Ambu bearing bates numbers
10 AMBU0093132-AMBU0093135.

11 25. Attached hereto as Exhibit 25 are true and correct excerpts from the June 12, 2009
12 deposition of Allan Jensen of Ambu.

13 26. Attached hereto as Exhibit 26 is a true and correct copy of deposition exhibit
14 number 92 used at the May 19, 2009 deposition of Henrik Wendler of Ambu bearing bates
15 numbers AMBU017574-AMBU017577.

16 27. Attached hereto as Exhibit 27 is a true and correct copy of the transcript from the
17 July 31, 2009 deposition of Herbert D'Alo.

18 28. Attached hereto as Exhibit 28 is a true and correct copy of the transcript from the
19 August 6, 2009 deposition transcript of Herb D'Alo

20 29. Attached hereto as Exhibit 29 is a true and correct copy of a June 17, 2005
21 Amendment relating to U.S. Patent Application No. 09/412,954 (that issued as the '100 patent).

22 30. Attached hereto as Exhibit 30 is a true and correct copy of an Office Action dated
23 October 19, 2005 relating to U.S Patent Application No. 09/412,954.

24 31. Attached hereto as Exhibit 31 is a true and correct copy of an Amendment in
25 Response to Non-Final Office Action dated April 19, 2006 relating to U.S Patent Application
26 No. 09/412,954.

27 32. Attached hereto as Exhibit 32 is a true and correct copy of European Patent
28 Application No. EP 0 732 116 A2.

1 33. Attached hereto as Exhibit 33 is a true and correct copy of the May 22, 2006
2 Interview Summary relating to U.S Patent Application No. 09/412,954.

3 34. Attached hereto as Exhibit 34 is a true and correct copy of the August 21, 2006
4 Notice of Allowability of U.S Patent Application No. 09/412,954.

5 35. Attached hereto as Exhibit 35 is a true and correct copy of U.S. Patent No.
6 5,738,094 issued April 14, 1998.

7 36. Attached hereto as Exhibit 36 is a true and correct copy of an Office Action dated
8 March 6, 2002 relating to U.S Patent Application No. 09/412,954.

9 37. Attached hereto as Exhibit 37 is a true and correct copy of an Office Action dated
10 October 1, 2002 relating to U.S Patent Application No. 09/412,954.

11 38. Attached hereto as Exhibit 38 is a true and correct copy of an Office Action dated
12 April 9, 2003 relating to U.S Patent Application No. 09/412,954.

13 39. Attached hereto as Exhibit 39 is a true and correct copy of an Office Action dated
14 September 30, 2003 relating to U.S Patent Application No. 09/412,954.

15 40. Attached hereto as Exhibit 40 is a true and correct copy of an Office Action dated
16 December 15, 2004 relating to U.S Patent Application No. 09/412,954.

17 41. Attached hereto as Exhibit 41 is a true and correct copy of the Report of Ryan
18 Sullivan, Ph.D., dated June 19, 2009.

19 42. Attached hereto as Exhibit 42 is a true and correct copy of selected Ambu
20 document production bearing bates numbers AMBU016563, AMBU138536, AMBU234453,
21 AMBU309204 and AMBU309659

22 43. Attached hereto as Exhibit 43 is a true and correct copy of Ambu document
23 production bearing bates numbers AMBU247475-AMBU247480.

24 44. Attached hereto as Exhibit 44 are true and correct excerpts from the June 3, 2009
25 deposition of John Schmitz of Ambu.

26 45. Attached hereto as Exhibit 45 is a true and correct copy of Section 2163, pages
27 2100-171 and 2100-172, from the Manual of Patent Examining Procedure, Revision 6,
28 September 2007.

1 46. Attached hereto as Exhibit 46 is a true and correct copy of the original drawings
2 filed with U.S. Patent Application No. 09/412,954.

3 47. Attached hereto as Exhibit 47 is a true and correct copy of the British priority
4 application GB 9821771.4, which is identified on the front of the '100 patent under the heading
5 "Foreign Application Priority Data."

6 48. Attached hereto as Exhibit 48 is a true and correct copy of Ambu document
7 production bearing bates number AMBU002108-2113.

8 49. Attached hereto as Exhibit 49 are true and correct copies of excerpts from the
9 May 20, 2009 deposition of Lasse Petersen of Ambu.

10 50. Attached hereto as Exhibit 50 is a true and correct copy of the Order Construing
11 Patent Claims [Doc. # 171].

12 51. Attached hereto as Exhibit 51 is a true and correct copy of a Preliminary
13 Amendment dated April 26, 2006 submitted to the Patent Office in a continuation application to
14 U.S. Patent Application No. 09/412,954.

15 52. Attached hereto as Exhibit 52 is a true and correct copy of the Ambu AuraOnce
16 Datasheet.

17 53. Attached hereto as Exhibit 53 is a true and correct copy of the original
18 specification and claims filed as U.S. Patent Application No. 09/412,954.

19 54. Attached hereto as Exhibit 54 are true and correct excerpts from the May 19, 2009
20 Deposition of Henrik Wendler of Ambu.

21 55. Attached hereto as Exhibit 55 is a true and correct copy of Ambu document
22 production bearing bates number AMBU006325.

23 I declare under penalty of perjury under the laws of the United States of America that the
24 foregoing is true and correct.

25 Executed on August 28, 2009, at Irvine, California.

26
27 /s/John B. Sganga
 John B. Sganga

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 28, 2009, I caused the foregoing **DECLARATION**
3 **OF JOHN B. SGANGA IN SUPPORT OF PLAINTIFFS' OPPOSITIONS TO**
4 **DEFENDANTS' THREE PENDING MOTIONS FOR SUMMARY JUDGMENT** to be
5 electronically filed with the Clerk of the Court using the CM/ECF system which will send
6 electronic notification of such filing to the applicable registered filing users.

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14 555 California Street, 12th Floor
15 San Francisco CA 94104
16 T: 415-875-2300
17 F: 415-281-1350

18 I declare that I am employed in the office of a member of the bar of this Court at
19 whose direction the service was made.

20 Dated: August 28, 2009

21 
22 Megan Platin

23 7728071
24 082709

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